

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SEATTLE CITY EMPLOYEES')	
RETIREMENT SYSTEM, an agency)	
of the City of Seattle,)	
)	CASE NO. C10-555 RAJ
Plaintiff,)	
)	SEATTLE, WASHINGTON
v.)	April 2, 2010
)	
EPSILON GLOBAL ACTIVE VALUE)	MOTION FOR TRO/
FUND II, LTD., a British)	PRELIMINARY INJUNCTION
Virgin Islands corporation,)	
et al.)	
)	
Defendants.)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: BRADLEY THORESON, SAMUEL BULL,
RAFAEL STONE, CARLTON SEU

For the Defendant: HARRY SCHNEIDER, JR.
JEFFREY HANSON

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EXHIBIT A

1 April 2, 2010

1:30 p.m.

2 PROCEEDINGS

3 THE CLERK: We're here in the matter of the Seattle
4 City Employees' Retirement System v. Epsilon Global Active
5 Value Fund, et al., Cause No. C10-555, assigned to this
6 court. Counsel, please rise and make your appearances.

7 MR. THORESON: Good afternoon, Your Honor. Brad
8 Thoreson from Foster Pepper for plaintiff. I have with me
9 Sam Bull from Foster Pepper; Rafael Stone, one of my partners
10 at Foster Pepper; and Cecelia Carter, the executive director
11 for the plaintiff; and Carlton Seu, who is with the City of
12 Seattle Attorney's Office.

13 THE COURT: Good afternoon, all of you.

14 MR. SCHNEIDER: Good afternoon, Your Honor. Harry
15 Schneider on behalf of defendants. With me is my colleague,
16 Jeff Hanson.

17 THE COURT: Good afternoon to both of you as well.

18 From the defendant's perspective, who will be arguing on
19 behalf of the defendant? Yourself, Mr. Schneider?

20 MR. SCHNEIDER: If the court will please, yes.

21 THE COURT: All right. Thank you for attending this
22 afternoon. The court scheduled this without a lot of notice.
23 The court didn't receive much notice in terms of the request
24 of the parties.

25 I'd like to begin with counsel for the plaintiff. If you

1 would step to the lectern, I have several questions I'd like
2 to ask of you before you begin your formal presentation to
3 the court.

4 I'd like to begin, first of all, by asking you, what's the
5 status on service? I think there's only two entities that
6 have been served so far. What's the update?

7 MR. THORESON: To the best of my knowledge, Your
8 Honor, the only entity that has not been served is Mr. and
9 Mrs. Stevanovich, who, per declarations filed, have
10 apparently been avoiding service.

11 We have served the BVI corporations in the British Virgin
12 Islands, we served the investment management company in
13 Delaware, and then there's a Cayman Island entity as well
14 that's been served in the Caymans, I believe. So we've
15 effectuated the service process of the -- all the applicable
16 pleadings, with the exception probably of some of the more
17 recent filings. But at least a summons, compliant, and the
18 TR0-associated declarations, and those pleadings should be in
19 the court file and should be part of the -- what was filed as
20 part of the removal, because I know that we filed the
21 affidavits of service with the King County Superior Court.

22 THE COURT: Before we go any further, Counsel, the
23 court set this for today with the understanding that the
24 parties will be prepared to go forward on the TR0 and/or the
25 injunction. Is that part your understanding as well?

1 MR. SCHNEIDER: That is our understanding of what you
2 indicated, yes.

3 THE COURT: Is there any reason why we should delay
4 these proceedings regarding the issuance of injunction or the
5 denial?

6 MR. THORESON: Not from our perspective, Your Honor.
7 I believe the authority is that --

8 THE COURT: That's as far as you have to go, Counsel.
9 Counsel for the defendant's perspective?

10 MR. SCHNEIDER: Yes.

11 THE COURT: You are of the understanding as well that
12 we're proceeding today on the injunctive relief as well?

13 MR. SCHNEIDER: That is my understanding. In answer
14 to your other question, we believe there are reasons to not
15 proceed today with issuing any injunction.

16 THE COURT: Okay. I'm not asking about the
17 substantive basis; I'm saying in terms of your being ready to
18 argue on the motion today. That's what I'm getting to.

19 MR. SCHNEIDER: This won't take long.

20 THE COURT: Okay.

21 MR. SCHNEIDER: If the court wants to hear argument,
22 we are prepared to present argument.

23 THE COURT: Okay.

24 MR. SCHNEIDER: But we believe that a more -- not to
25 suggest that this is not an orderly proceeding. We think a

1 more thorough area with witnesses would make sense, and I'm
2 prepared to address that in oral argument. But I'm not
3 suggesting that I'm unable to present argument today. We
4 understand we're here to do just that.

5 THE COURT: Okay. If you'd step back to the lectern,
6 Mr. Thoreson.

7 Now, with that out of the way, Counsel, I'd like to go
8 through some of the areas of relief, and then I'll give you a
9 chance to make a formal presentation to the court.

10 If relief is to be tied to your original claim, breach of
11 contract, under what authority or basis can the court order
12 nonpayment of the management fee?

13 MR. THORESON: We believe, Your Honor, under the --
14 and I -- it's -- Ms. Carter's supplemental declaration
15 includes a -- what we believe to be the operative
16 confidential offering memoranda. I'm just going to grab it
17 real quick and step away.

18 Ms. Carter filed a declaration in support of the motion on
19 March 31, 2010, Cecelia Carter, and the Exhibit B to that,
20 Your Honor, the confidential offering memoranda, and the page
21 4 of the redemption procedure specifically indicates, "With
22 respect to assets representing any part of the redemption
23 price not paid within 30 days of the redemption date, the
24 fund will not charge management fees and will pay interest at
25 a rate paid by the fund's prime broker on the fund's cash

1 balances."

2 We understand there were prior confidential operating
3 memoranda. This was provided to our client, we believe it's
4 the operative document, and we believe that when the
5 redemption request was made in January and when it was
6 denied, the fund was gated at the 30 days passed, that at
7 that point the fund was not allowed per the operative
8 covenant to take any management fees.

9 THE COURT: Well, let me ask you, from a practical
10 standpoint, Counsel, if the court were to grant a request
11 that said stop payment of all management fees, it's
12 essentially funds not managed by any entity, what's supposed
13 to happen under the circumstances?

14 MR. THORESON: That's a great question. I think when
15 we get into oral argument, you'll see that there are no
16 assets within this fund at this point per the Bergan
17 declaration that was supplied to the court by Perkins Coie on
18 Tuesday, that they've actually been placed in a different
19 fund, and they have then gone from that fund to a different
20 fund. But I don't believe anything is happening at the fund
21 level at this point that would justify the payment of a
22 management fee.

23 THE COURT: Counsel, if the funds, according to your
24 theory, are now with a different entity, under what authority
25 would the court have interest and control over this other

1 entity?

2 MR. THORESON: I don't think you do, Your Honor. I
3 think all you have is jurisdiction and control over Fund II,
4 which is the fund whom we believe is not entitled to recover
5 any management fee at this point.

6 THE COURT: So are you withdrawing your request for
7 termination of the management fee payment?

8 MR. THORESON: Well, I believe what we did, Your
9 Honor, is we requested a termination or a cessation of the
10 fund we have a contractual relationship with. I don't -- and
11 it may be unclear in the order, but I -- our request would be
12 that Epsilon II -- Epsilon Global Active Fund II be the party
13 that is disallowed from taking a management fee at this point
14 or anyone acting on their behalf.

15 THE COURT: Another question: Recognizing the
16 specificity requirements for either the TRO or a preliminary
17 injunction, you asked the court to order the defendants to
18 take no action that could be deemed harmful. Now, the
19 concern I have is, I'm not quite certain what that means or
20 how far the court is supposed to go in that regard, because
21 that would, in theory, put the court in a position of having
22 to second guess every single determination that could be made
23 by the managing entity.

24 MR. THORESON: I agree, but I also think that given
25 the situation, which we believe is not overstated when you're

1 dealing with Madoff or Enron -- I mean, just complete hide
2 the ball, refuse to give any information, that having the
3 entity against whom the injunctive relief is ordered be
4 worried about every decision they make, I -- I mean,
5 particularly given what we know, I think that is fair and
6 equitable in this situation.

7 And I think when we get into argument -- I know the
8 court's reviewed the pleadings -- but when we get into
9 describe what's happened and what we've determined in the
10 couple of day has happened, enjoining the managing partner
11 from engaging in any activity that could conceivably be
12 harmful to the pensioners from the City of Seattle is fair
13 relief, it's equitable relief.

14 Maybe when they produce records and they tell us what's
15 going on so we can assess our position as a shareholder,
16 whether we're the last man standing, where all our money is,
17 how it's been invested, why we weren't given disclosures that
18 we believe we're entitled to receive, why they're not giving
19 us information, why the SEC is investigating the entity that
20 they decided to put our money into that's disallowed by, we
21 believe, the investment guidelines contrary to them, when
22 they've answered those questions, maybe we'll be able to sit
23 here and go, oh, here's some things they should be able to
24 do, here's some things it shouldn't. But what we have is
25 complete disregard, complete lack of information, and we

1 think based on that situation, Your Honor, something broader
2 as opposed to narrower is appropriate.

3 And if they believe -- if we believe they've violated it,
4 then that we might be in front of you at some point arguing
5 it harmful, and they can argue it wasn't. But at least
6 they're the ones that are placed in the riskiest position,
7 meaning do something that is perceived to be bad, and if it
8 ends up being bad, you're going to be held accountable by the
9 court.

10 THE COURT: Well, Counsel, I assume you'll be giving
11 the court a little bit more help in the context of defining
12 what harmful means, because at this point in time it's rather
13 nebulous for the court to be able to make that assessment.

14 MR. THORESON: I will try.

15 THE COURT: Next question, Counsel: You seek relief
16 in your TR0 -- I'm assuming for injunctive purposes as
17 well -- of the auditing of the financial statements from
18 2009. That isn't due until May of 2010. Now, Counsel, isn't
19 that premature for the court to make determinations before
20 it's even ripe for the court's decision?

21 MR. THORESON: Yes. We will throw out that.

22 THE COURT: And, Counsel, not that it's supercritical
23 to the court's determination on your motion, but you've
24 tossed in your theory the alter ego issue regarding
25 Stevanovich. Is that determination necessarily critical for

1 the issuance of an injunctive TRO?

2 MR. THORESON: Let me spend 30 seconds just to give
3 the court our thought, and then I'm going to say unlikely
4 necessary, but I'm just going to give you why we've asserted
5 the alter ego claim.

6 We really need the information. We're not asking for any
7 conclusions as to liability in this case. We just need to
8 know what's going on. And we were a little bit, given what's
9 happened, concerned that Epsilon II may appear and say, oh,
10 but we don't have the documents, they're in the custody of
11 our investment manager, or, oh, they're in the possession of
12 Mr. Stevanovich, or, oh, they're in the possession of our
13 broker-dealer and therefore we can't comply with the order.

14 So the idea was, because it appears that all of these are
15 Stevanovich-controlled entities, we've argued the altered ego
16 claim in the event that on the motion for sanctions for
17 failure to comply, assuming the court were to order some
18 production here and assuming, perhaps, Epsilon II says, we
19 don't have the documents, that perhaps we have a cause of
20 action that would allow the court to order a party with whom
21 we don't have direct contractual privity the ability to
22 require that party to produce the records that Epsilon II
23 claims it doesn't have.

24 THE COURT: Well, Counsel, you really seek
25 information; is that the bottom line?

1 MR. THORESON: That is absolutely correct, Your
2 Honor.

3 THE COURT: And counsel for the defense has proposed
4 an alternative to injunctive relief, and that alternative is
5 expedited discovery and an early trial date, and they've
6 listed several witnesses that they believe having their
7 depositions taken would give you the necessary information
8 you desire. Do you think that that's a viable option or
9 alternative?

10 MR. THORESON: I think we're entitled to the
11 information. If what they're saying is they're refusing to
12 honor the obligation to give us the source documents or audit
13 financial records, which I'll chat about a little bit in a
14 minute, yeah, I guess if we could do it Monday or Tuesday and
15 that's as soon as they can get us the documents, and we can
16 get the information, that would probably be acceptable.

17 But, you know, it's a little bit we're faced with the
18 hangover from Bear Stearns and Lehman and these other folks.
19 It's terrifying when you're sitting in the pensioners'
20 position. They've got \$20 million invested and they can't
21 get any meaningful information.

22 And then the stuff that we found out recently is even more
23 troubling; that we've been invested in a fund that's
24 insolvent. We just spoke with the liquidator yesterday who
25 told us they don't have any money there, they've invested it

1 in another fund. And the person who's responsible for all
2 this, Mr. Stevanovich, is avoiding service.

3 THE COURT: Okay. The last question I have before
4 you proceed with your argument to the court: In looking at
5 the actual confidential offering memorandum, as I note from
6 that document, Counsel, it appears that what you agreed to
7 was to get the audited report, but you're asking the court
8 now to provide you with underlying data. Wouldn't that
9 exceed the boundaries of which you agreed to initially?

10 MR. THORESON: I think that it is less than what we
11 agreed to initially, but I think it is a suitable alternative
12 in the event that 10 months or 12 months after the report is
13 due, the documents are not produced.

14 Again, all we're seeking, Your Honor, is information that
15 tells us if we are the last man standing in the fund, meaning
16 whether it's \$20- or \$25 million, whether we're the only
17 shareholders. We're seeking information about where -- why
18 the \$20- or \$25 million, which we know was is in our fund, is
19 not there anymore. We're looking at the rights, vis-à-vis
20 our fund, Epsilon II, or our monies were invested as to the
21 Westford fund that's in insolvency were apparently invested
22 in. And we're -- we're -- I mean, we're entitled to
23 understand our situation, our predicament, and I don't think
24 that Epsilon II can say -- and I'll get into it in more
25 detail.

1 But, you know, the auditor hasn't given audited financial
2 statements. I mean, in the real world, the reason that
3 doesn't happen is because the party who has instructed the
4 auditor to proceed with the audit hasn't accepted the audit.
5 But it's in their control. They haven't put anything in the
6 record that suggests they've gone to another auditing firm to
7 try to get this done, completed by somebody else.

8 They've stated -- and I think this is very problematic --
9 that it looks like an SEC investigation happened late last
10 year in the Westford, which was a fund we never knew we were
11 invested in, it doesn't have anything to do with Epsilon II,
12 but we now understand why they can't honor our redemption
13 request is because they took our money and put it into
14 another fund that was disallowed, and that fund is
15 delinquent, that fund is insolvent, and that fund has
16 apparently transferred its -- all of its invested \$180
17 million into another fund.

18 But we -- what's really troubling here, you're asking
19 about the source information that -- that every year until
20 2009, within 120 days we got the information. In 2009 -- or
21 2008, we didn't get the information, and apparently whatever
22 this SEC investigation happening, it didn't happen until well
23 after we've been provided, typically, the information. And
24 it just -- you know, it's one of those ones that it just
25 doesn't look right, it doesn't smell right. It's the fact

1 that three weeks ago or four weeks ago, we invited these guys
2 to come out and tell us what the situation was, and they
3 wrote us an email declining, just saying, no, we're not going
4 to come.

5 We're entitled to information, and I believe what we're
6 asking, Your Honor, is less -- we can't get the audited
7 statements because apparently they're not done. But we're
8 taking their representation -- we don't have anything before
9 the court, by the way, from PricewaterhouseCoopers saying
10 that they're not done or why they're not done. We just have,
11 again, their representations.

12 But we believe that the source documents are inclusive,
13 that they're what PwC is relying on to create the audited
14 financial statements and annual report. And, yes, it's
15 lesser, but at least it gives us the information that we need
16 to decide how to go forward. We don't even know that right
17 now.

18 THE COURT: Let me ask you this, Counsel: The court,
19 understanding the original claim is breach of contract --

20 MR. THORESON: Right.

21 THE COURT: -- and assuming the original claim of
22 breach of contract, the court has to look at the actual
23 contract in making its determination of its assessment of the
24 likelihood of success in this case of an actual breach.

25 Now, using that as a base, if the initial agreement

1 provides for an annual report, but doesn't reference
2 underlying documentation and data, doesn't that go more
3 towards the issue of discovery as opposed to immediate
4 relief, and wouldn't the remedy that you're calling for
5 require the court to engage in reformation of the contract or
6 restructure of the contract that didn't originally exist?

7 MR. THORESON: I don't -- I don't think it does,
8 because I think the court, in the injunctive proceeding, the
9 nature, can fashion whatever remedy it believes is equitable,
10 given the situation.

11 In this situation, Your Honor, what the fund is saying is
12 we don't have these because we've got an SEC investigation.
13 That's apparently what they're saying, although now
14 Mr. Bergan is saying, "but we think we'll have them in a
15 month."

16 I hope the court noticed that in the email we got from the
17 representative of the fund back in October, they said they
18 were going to give them to us then, too, and we still don't
19 have them.

20 But I think the court can fashion whatever remedy it deems
21 is equitable. I believe that that is a -- the source
22 documents are a subset of what they actually have to give us,
23 which is an audited, you know, financial statement and annual
24 report from their auditors, which it's troubling they can't
25 get it. But I believe the court can order that remedy as a

1 remedy that is encompassed by the breach of contract.

2 You can't perform what the contract obligation requires
3 you to perform and give us the alternative, and the best
4 alternative performance are the source documents, which would
5 give us at least the understanding of what our status is
6 within this fund, how our \$20 million was transferred to
7 another fund that wasn't supposed to get our funds, and the
8 other relevant information relative to the operation of the
9 fund, the subscription agreement between our fund and
10 Westford so that we can evaluate our situation. That's all
11 we're trying to do.

12 THE COURT: All right, Counsel. It's this court's
13 standard practice -- I think you've been before me in this
14 court and the other court -- is to make sure that I get all
15 the questions that I have answered before you begin your
16 presentation, but I think you can get an idea what the
17 primary concerns that this court has in response to the
18 relief that you're requesting. You may proceed, Counsel.

19 MR. THORESON: Thank you, Your Honor. I appreciate
20 the court's questions, and I will try not to go over the
21 areas that have already been covered by your questions.

22 THE COURT: That's appreciated.

23 MR. THORESON: Again, may it please the court, Brad
24 Thoreson for the plaintiffs, Seattle City Employees'
25 Retirement System. I'm going to refer it to probably, Your

1 Honor, today as either the pension fund or SCERS, an acronym,
2 S-C-E-R-S.

3 SCERS is a public pension fund, Your Honor, that's funded
4 by current and retired employees of the City of Seattle.
5 It's an agency of the City of Seattle, and it currently has
6 over 15,000 pensioners who are beneficiaries of the fund, and
7 they are, again, current and former employees.

8 We mentioned it in our pleadings, Your Honor, and I think
9 it's important to note that as a pension fund, we also have
10 certain reporting obligations under the pension fund rules
11 for reporting the fair market value of certain investments.
12 I think something the court should just understand as it's
13 proceeding is that it's very difficult for us to do this at
14 this time given the questions that have arisen out of this
15 asset, this investment, and it's very important that we
16 sooner than later really get to the bottom of this and find
17 out what is going on relative with investment, because we
18 really don't know.

19 As I said before, who I have with me is Cecelia Carter,
20 who administered the fund. She is the executive director.
21 Mr. Seu is with the City of Seattle. Mr. Stone is head of
22 our investment management group, the firm that represents
23 many public pension funds across the country, and Mr. Bull.

24 We're seeking the enforcement of the TR0. As the court
25 knows, the TR0 was issued two and a half weeks ago, and today

1 there's been no compliance, although there's been service.

2 I know that the court asked earlier opposing counsel
3 about, you know, whether we needed a continuance or not. I
4 just would hope the court take record in the files, and there
5 are extensive pleadings, that, you know, the day that we went
6 down and took the TR0, it's kind of ironic, the confidential
7 subscription agreement identifies local attorneys as the
8 fund's lawyers.

9 We sent the information to them. They had an opportunity
10 to appear. When I got back to my office and called the
11 attorney who had called me, he said, "Well, did you get the
12 order?" And I said, yeah. He said, "Can you send me a
13 copy?" I did. We then were told, "I don't have authority to
14 accept service for anyone."

15 The next day, Mr. Bergan and I and Mr. Bull engaged in
16 some exchanges about service and telling them who their
17 lawyers were and who they represented, and Mr. Bergan said he
18 would immediately be hiring lawyers.

19 And I think it's unfortunate, and certainly it's not
20 Mr. Schneider or Mr. Perkins, you know, probably, fault, but
21 literally two days before the preliminary injunction hearing
22 was scheduled, I got a call while I was in -- back east,
23 saying, and, "Oh, we've been hired." So they had a while to
24 digest this, but they didn't hire local counsel for some
25 time.

1 Well, what we -- the only reason I say that is because
2 this TR0 has been in place for two and a half weeks, and we
3 haven't got a single document. The most constructive thing
4 we got is Mr. Bergan's sworn declaration where he says some
5 additional facts that are very troubling.

6 You know, what we are seeking for purposes of the TR0,
7 Your Honor, is provision of the documents required by the
8 confidential offering memorandum. I don't think there's any
9 dispute what they owe us, and I don't believe that the case
10 they cited, the impossibility case, has suggest- -- and we
11 have some supplemental briefs we can hand to the court, if
12 you'd like -- suggests that they can hide behind that and
13 say, "We did what we needed to do, and therefore we don't
14 have to do anything. We haven't breached. They've been in
15 breach for eleven months. They haven't offered any real good
16 reason for why they haven't given us the audit statements.
17 They haven't put before the court any factual testimony
18 suggesting they tried to find another auditor, and put before
19 the court anything from PricewaterhouseCoopers saying, "We're
20 the ones holding it up." What, in all likelihood, as we said
21 before, Your Honor, the facts probably are that
22 PricewaterhouseCoopers is done with its audit and has
23 presented the findings to Epsilon and Epsilon said, no, we
24 can't do it.

25 Because we're pretty confident that, as with Westford,

1 they're not really concerned. They don't have any assets,
2 they don't have the ability to honor any redemption requests,
3 and they don't want everybody knowing that, as with Westford,
4 that Epsilon II is insolvent. But they do believe they have
5 control. We don't believe they have met any kind of burden
6 showing possibility.

7 We believe we're entitled to documents showing whether
8 we're the last standing shareholder in Epsilon II or whether
9 there is others. From some financial records we got in '06,
10 Your Honor, almost four years ago, the total value of the
11 fund had gone, over the prior two years, \$200 million to \$30
12 million. As the court will note, we are stated to have \$25
13 million invested. We don't know of any new investors. It
14 could very well be we're the last shareholder, and if we are,
15 then we're entitled to take over the fund and start to try to
16 figure out what our remedies are as it relates to what
17 happened to the investments.

18 You know, in the alternative, and I said this before,
19 we're entitled to the source documents so that they can't
20 hide behind this idea that, well, we don't have audited
21 financial statements so we don't have to give you anything,
22 which is what we've basically been told. We don't believe
23 that's a reasonable reading of the agreement, we don't
24 believe that's a fair interpretation, and if that were the
25 case, then they could basically, for the next five or ten

1 years, instruct their auditors not to issue a final report
2 and we could not get anything. I don't think that that's
3 what that provision was intended to do.

4 We believe we're also entitled -- and we've modified the
5 amendment somewhat, Your Honor -- to documents related to
6 what we now know as of three days ago the probably 2008
7 investment of all of our money into the insolvent entity,
8 Westford. It's obviously a very troubling development, the
9 fact that, you know, there were -- they were supposed to -- I
10 know this is complicated. If I may take a couple of minutes
11 and try to explain the fund structure here, Your Honor?

12 THE COURT: You may, Counsel. I've read your
13 pleadings, Counsel, to the extent that you've identified at
14 least the broad categories, so if it's something beyond what
15 you've already provided.

16 MR. THORESON: All I'm going to do -- I'm just going
17 to hold this up, if I can?

18 THE COURT: Certainly.

19 MR. SCHNEIDER: Permission to move?

20 THE COURT: Get as close as you want, Counsel.

21 MR. THORESON: Thank you, Your Honor.

22 So the City of Seattle invested \$20 million in '03 and '04
23 into Epsilon II, and there's the direct investment. And the
24 red is basically because Stevanovich is involved in all of
25 these entities.

1 But what this provides for in the guidelines is that it
2 was then going to be invested in a master fund with certain
3 objectives, which was called Epsilon Global Master Fund II.

4 What we found out on Tuesday happened, and I believe this
5 is in Mr. Bergan's declaration, was that instead of this
6 happened, or this may have happened at some point, but what's
7 ended up happening is a new arrow has happened, and they've
8 done a direct investment into Westford, and they did this in
9 '08, we believe, but that's what Mr. Bergan's declaration
10 says.

11 We didn't know about that until three days ago. And then
12 talking to the liquidator yesterday, who had been appointed,
13 the entity has been deemed to be insolvent. A liquidator
14 from Grant Thornton that's been appointed to take control of
15 this Westford special active fund said there's no assets in
16 this. All of it had been invested in another fund controlled
17 by Mr. Stevanovich.

18 So it's not gone like this, and that's what we believe.
19 We were offered, initially, and it's in the documents, the
20 opportunity to invest in Westford. We declined. As Ms.
21 Carter's declaration, filed the other day, Your Honor,
22 indicates, they knew that because they came out in October of
23 last year and again asked us to consider an investment in
24 Westford, which we think is dubious, at best, because
25 obviously at that point Westford is illiquid and being

1 investigated by the SEC. We declined. But I think it's
2 evidence showing that the investment in Westford should never
3 have happened.

4 I raise that, Your Honor, because I think we're also
5 entitled, therefore, to see the documents between Epsilon and
6 Westford wherein all of our money was invested in Westford.
7 First off, it's disallowed, but second, to just find out what
8 the rights are between Epsilon II and Westford, who, again,
9 we learned about three days ago relative to that investment.
10 We just don't know. We never heard about it.

11 THE COURT: Okay. I'm still trying to keep this
12 connected, Counsel, to the original contract and the
13 authority that this court would have to grant your request
14 for information about an entity that wasn't directly
15 connected to the original agreement or contract.

16 MR. THORESON: I believe, Your Honor, if you look at
17 the -- I mean, I agree that this is going -- if you read the
18 four corners of that provision, I mean, I'm trying to adopt
19 kind of a more material and fair kind of order on some of
20 these things, because I'm not anticipating -- they've --
21 they've -- they've gone outside of what the contract allows.

22 But if you look at it, Your Honor, there's three things
23 that this provision read as narrowly as possible provides
24 for; one is within 120 days, an audited financial statement;
25 two, within 120 days of the last day of the year, an annual

1 report; and three -- and I understand this is discretionary,
2 but I think the court acting as a court of equity can review
3 this, and given this situation, order the relief it deems
4 appropriate, just and equitable. You know, "Describing the
5 fund's activities in such detail as the fund in its sole
6 discretion shall determine." Well, the fund, at least per
7 Mr. Bergan's declaration, decided to invest our money in '08
8 into a fund that's insolvent. We should be able to, maybe
9 through discovery, but I would say for an order from this
10 court, if they clearly have information, tell us the terms
11 and conditions on which that investment was made so we can
12 again evaluate our position.

13 We talked about the two other activities, Your Honor, so
14 I'm not going to get into -- I guess you asked me what I
15 thought "harmful" meant. And -- and -- and in my estimation,
16 Your Honor, it would be to maintain the status quo, not allow
17 them to do any activities that may further damage or dilute
18 the \$20 million investment by SCERS. I know that that is not
19 probably as crystal clear as the court would like. I'm happy
20 to talk about language at a later point. But in my world,
21 and I think, you know, Mr. Stone does this on the transaction
22 basis, would be handcuffing the general partner so they can't
23 do anything that materially affects us in a bad financial
24 way, more than we've already been harmed. Clearly the harm
25 is there, but what the harm is, we don't know until we get

1 the records.

2 And, lastly, we believe that the '09 agreement that's
3 attached to Ms. Carter's declaration, when the 30-day period
4 ran, the redemption we made in January was not honored, that
5 the right to take management fees at the Epsilon Global
6 Active Fund II level Cs, they're not allowed to do it, and we
7 believe that the order should issue confirming that they're
8 not allowed to do so.

9 I said earlier that, you know, I hate to use -- it's sad
10 when you're in front of a court using Madoff as an example,
11 but I think the court has to look at the conduct of the fund.
12 So far there's no transparency, there's no provision of
13 records, there's no denial that we haven't got it. They're
14 just trying to blame a third party, who apparently is not
15 giving them, if you even accept their arguments, information
16 about us because they invested our money in a fund that they
17 shouldn't have invested it in the first place, and that fund
18 is being investigated by the SEC. That's troubling.

19 The conduct of Mr. Stevanovich, a fund manager who's a
20 trustee at the University of Chicago, who has a mathematics
21 building named after him, and who, you know, is director or
22 owner directly or indirectly of all of these entities that I
23 showed you up on the chart, shows up on the request of the
24 executive director of a large public pension fund and answers
25 questions. All Mr. Stevanovich has done is evade service.

1 And if you look at the service, it's really bothersome.
2 Sending the housekeeper saying that Mrs. Stevanovich is in
3 the shower, at the gate at their nice house in Florida,
4 telling the processor to come back 20 minutes later,
5 unwilling to open the door 20 minutes later, and then
6 basically dodging service effectively.

7 We have the SEC investigation of Westford, the fund that
8 we, again, learned just three days ago that our funds were
9 invested in. The gating of the redemption request. We want
10 our money back; you can't have it. It wasn't based on the
11 fact that anything was wrong, by the way, in Epsilon II, but
12 based on the fact that the money was invested in the
13 disallowed fund, Westford, who, in turn, apparently is
14 insolvent -- I mean, not apparently. In the BVI, a
15 liquidator has been appointed in an insolvency proceeding.

16 And I -- you know, I was -- and this is absolutely the
17 case. I was watching CNBC last night, and they had a deal on
18 Enron, and there were two things I thought was real
19 interesting, and that, again, I think is why we need
20 injunctive relief to speed the process so we can at least
21 figure out what's going on. And that -- it was *The Smartest*
22 *Guys in the Room*. This show was about Enron and Skilling and
23 Lay. And the first was Barbara Boxer, the congresswoman,
24 drilling Skilling, "Mr. Skilling, why was it you were selling
25 all your stock while you were telling all your employees to

1 buy and everything was fine?" You know, and Skilling, before
2 he got sentenced to 25 years, didn't respond.

3 The second part -- and really -- I -- I hope the court
4 understands this. This is not their money. This is the
5 15,000 pensioners' money. But they were talking to a guy
6 from PGE down in Portland, was a longtime Enron employee, and
7 he goes, you know, it's terrible. He goes, "I've invested
8 every month my hard-earned money into my retirement. Those
9 guys got tens of millions, and I have nothing." That -- it
10 really is a fair anecdote for what we have going on here.

11 And, you know, whether or not they're liable, I can't sit
12 here before the court and tell you that we're going to get a
13 judgment against Mr. Stevanovich for the fund for \$20 million
14 or \$30 million, but I can tell you there's no transparency,
15 there's no attempt to provide the requested information. And
16 when you take that and couple that with all the bad stuff
17 we've learned, we're entitled to get the information to see
18 what the status is.

19 Here are the undisputed facts: In 2002, their client came
20 to Seattle and asked the fund to invest in Epsilon II. They
21 also presented Westford and some others. In 2003, the
22 pensioners invested \$10 million into this fund. That was
23 supposed to then go into the master fund for investing with
24 specific objectives. We don't have any evidence to suggest
25 that didn't happen initially.

1 In 2004, they invested another \$10 million. And then we
2 found out three days ago that in 2008, in a fund that is now
3 insolvent, instead of going into the master fund and being
4 invested, they invested in the very entity we declined to be
5 invested in, which is Westford, but problematic.

6 We know that the 2008 audited financial statement was due
7 11 months ago, and we know that every year before that, it
8 had been provided on time. We -- it does not appear that the
9 SEC commenced any formal investigation until the later part
10 of 2009 into Westford, so we don't understand why -- how you
11 can make this connection with PricewaterhouseCoopers in terms
12 of an investigation, and not giving a report six or seven
13 months prior just doesn't make sense.

14 And, in fact, they're kind of falling on their own sword
15 if they come in and say, well, we knew about it well before,
16 because how could they then explain why they were out
17 pitching the Westford funds in October of 2009? If they knew
18 there was an SEC investigation, they knew it was insolvent.
19 The two cannot exist in the same universe.

20 So given the concerns that we have just based on the lack
21 of information in 2010, January of this year, Your Honor, we
22 requested redemption, and six days later, Mr. Stevanovich
23 responded and refused the redemption request, not based on
24 anything bad within Epsilon II, but based on -- and we didn't
25 understand this until we got Mr. Bergan's declaration -- but

1 based upon the liquidity of Westford and the SEC
2 investigation into Westford. It all makes sense now, because
3 contrary to what they were supposed to do, they took their
4 money and invested it into Westford, who we still don't
5 believe was an improper basis to deny the redemption request
6 because they should have our money and they should be able to
7 pay it back.

8 I think the court should pay particular attention to the
9 declaration of Ms. Carter that's filed with our moving
10 papers, where we invited Mr. Stevanovich and his folks to
11 Seattle before any -- we don't want to be here. This is a
12 last resort. But when somebody is unwilling to communicate
13 with you, you don't have any other choices. We asked them to
14 come to Seattle and explain to us the situation. They wrote
15 back and refused. We filed the lawsuit.

16 So we believe, you know, that both legally -- and I'm
17 going to say this because this is a public pension -- I mean,
18 morally, we're entitled to this documentation. We're not
19 asking for a liability determination against these claims.
20 We're just asking for the documents so we can see where we
21 are.

22 And, again, like I said, we spoke to the -- we were
23 thinking we'd go down and intervene in the insolvency
24 proceeding and see if -- in the BVI, the British Virgin
25 Islands, and see if we can get our money back. So it was

1 troubling when we talked to the liquidator this morning and
2 he told us we had no money because it's all been invested,
3 all \$180 million had been invested in a master fund that
4 we're not even aware of called Westford Master Fund. So
5 we're not quite sure what we're going to do there, but it's
6 another troubling rainbow.

7 So what we want, Your Honor, is we want the documents. We
8 want to find out if we're the last investor standing in Fund
9 II. We want to figure out how it was they invested our funds
10 in Westford. We want to see the documents evidencing the
11 investment. We want to see what our rights are. We'd love
12 to see the audited financial statements and annual report,
13 but if they don't have them, give us the -- what we know you
14 have, which are the source documents so that we can figure
15 out what the situation is.

16 And I know what Epsilon has argued in terms of trade
17 secret and proprietary. I'm happy to talk about that. But I
18 think we all agree that the fewer shareholders in Epsilon II,
19 the less there can be any concern. And if we're the last one
20 standing, we know what we're entitled to under the Articles
21 of Association and the subscription agreement to take the
22 full fund and can do whatever we want with all this
23 proprietary information.

24 Let's talk for a minute, and I want to focus for a second
25 on the audit, Your Honor, because I think it's a red herring.

1 I -- I believe that the -- generally, the client controls the
2 audit process. And we also believe -- and I'll be very
3 interested to hear what opposing counsel says, because
4 Mr. Bergan kind of dances around this, and we certainly don't
5 want to say anything dishonest to a federal judge -- but we
6 believe it's absolutely probable that the only reason the
7 audit hasn't been issued is because it's being stopped by the
8 fund.

9 They've -- given what we know, this is not a growing
10 concern. The auditors would say that the fund is not letting
11 the report issue, and they're using that as a basis for not
12 giving us the information, which would give us the rights
13 that we're trying to assert -- we will assert, which is to
14 take control of the fund and figure out how to get back maybe
15 some of the pensioners' money.

16 There hasn't been a fact alleged that they tried to go to
17 someone other than PwC and get an audit, again, because we
18 believe they're stopping it from being completed. We haven't
19 got a single fact suggesting that the SEC investigation,
20 which, again, we believe occurred late last year, why that
21 would have delayed the audited financial statements that were
22 supposed to be given in 120 days if the SEC investigation
23 hadn't even started. It doesn't make sense.

24 Every prior year we got it out. Now we don't have it.
25 And, again, where there's smoke, there's fire. I think it's

1 pretty easy to conclude where this whole thing is going, and
2 it doesn't look like it's very good. But we need to get our
3 account -- our hands on the horns of the bull and try to
4 figure out if we have -- if there is anything left. We just
5 need to figure that out.

6 I think the court should pay particular attention to the
7 fact they haven't produced anything. We get a quarterly or
8 monthly report that says that we have -- our \$20 million
9 investment is worth \$25 million. There's nothing else except
10 for the letter we got gated.

11 If everything is okay, why aren't they giving us the
12 information? Why wouldn't they give us the source documents?
13 Doesn't make any sense.

14 So in conclusion, Your Honor, and I'm happy to answer any
15 questions the court might have.

16 I'm not going to get into the injunction standards,
17 because I think the court knows what they are: Fair and
18 equitable right, you know, likelihood of success on the
19 merits, invasion, damage, status quo, sliding scale. Counsel
20 pointed out in the brief -- I mean, we were -- sorry -- in an
21 earlier injunction this year, and I know what the standards
22 are, or late last year, I guess.

23 But I think what the court needs to understand is that we
24 clearly have met our burden as it relates to a right to this
25 information. I don't believe that their one cite where they

1 say impossibility gives them an excuse. And I particularly
2 believe that when you look at the gaps in the Bergan
3 declaration, which is the only -- other than the Alarm
4 Treatises of the two lawyers that practice in New York and in
5 the BVI who have -- you know, until I see that they have a
6 textbook, mean nothing to me. But we have a contractual
7 right. They haven't explained why they haven't honored that
8 right, other than to blame PwC. There's not a single piece
9 of evidence from PwC saying we've declined to do it because
10 we were doing this and we've been delayed. What you have is
11 their assertion that they have. We believe that any
12 reasonable person is going to conclude they're just holding
13 up the PwC audit from being issued because they have this
14 huge problem.

15 And let's face it. They just had a liquidator appointed
16 over the fund that we're invested in all of our money, and
17 Bergan says that. He doesn't say that anywhere in his
18 pleadings, but we know that. It's a matter of fact. We've
19 got the documents showing a liquidator was appointed. It was
20 opposed. The person who supplied the declaration for them
21 from the BVI was the lawyer sitting there arguing against it,
22 and they lost.

23 So where our money, at least, was supposed to -- it wasn't
24 supposed to go, but apparently went per the Bergan
25 declaration, that's an insolvency. That's an, essentially,

1 the words we use here, that's a bankruptcy proceeding.

2 So, you know, we've met our burden. We're entitled to
3 the -- I would say the best thing would be the audited
4 financial statements and the audit report, but I could say
5 within that category are the source documents that would be
6 used to compile that.

7 We're entitled to the information related to where we are,
8 vis-à-vis other investors within the fund. If we are the
9 last man standing, the right thing to do would be to tell us
10 that, not to play hide the ball.

11 We should know why they invested in Westford and what the
12 agreements are between the parties relative to that
13 investment. I mean, again, this isn't rocket science, this
14 is common sense. And I do get the impression that this is
15 just a big, unfortunate, but it's a kind of game for the
16 fund. They're using every kind of legal maneuver to try to
17 avoid giving us the information that we're entitled to that
18 would allow us, at least, to figure out what's going on.

19 THE COURT: Counsel, you're asking for something a
20 little bit different now. Previously you asked for the
21 source documents or the underlying documents to support the
22 issuance of the audited financial information or report, and
23 now you're asking for the reasons why certain determinations
24 were being made. Wouldn't that transcend the extent of what
25 you were originally requesting?

1 MR. THORESON: If I said that, I misstated, Your
2 Honor. Thank you for correcting me.

3 What I really meant was what we didn't anticipate was this
4 investment in Westford, and we need to know what our rights
5 are vis-à-vis Westford, and we just don't know. It's not an
6 allotted investment. But hopefully -- Mr. Stevanovich
7 controls all these funds, but hopefully at least he said in
8 Westford, we're going to give you \$25 million of our Fund II
9 money, here's the terms and conditions of that investment.
10 That's what they're supposed to do. But we just don't know.
11 We don't have those documents.

12 And, I mean, obviously our rights are kind of dependent on
13 what fund to do relative to the investment in Westford, but
14 we don't have that. Again, this -- it's more this case in
15 the nature of fact-finding, because Mr. Stevanovich and his
16 group wouldn't show up and give us the information, he
17 wouldn't show up and talk to us about what's happened, and
18 instead he's kind of -- unfortunately, he's not -- he's
19 evading service and he's hiding behind kind of the legal, I
20 mean, lawyers in the case.

21 THE COURT: All right.

22 MR. THORESON: So we've got request before Your
23 Honor. I'm happy to answer any questions you might have. I
24 really appreciate the court's time, and I know there's a lot
25 of information, so getting us in here quickly, it is

1 important to our client.

2 THE COURT: I appreciate the information, Counsel. I
3 have no additional questions at this point in time. Thank
4 you.

5 Counsel, if you'll step to the lectern. Good afternoon
6 again, Counsel.

7 MR. SCHNEIDER: Good afternoon.

8 THE COURT: Let's begin, Counsel. I have several
9 questions, using the same format. One of the things that
10 courts always find difficult is when another court has at
11 least exercised its discretion in issuing an order and
12 there's been noncompliance with the order. And in this case,
13 there doesn't appear to be any effort towards compliance.

14 So if the defendants or some defendants were served about
15 two and a half weeks ago, according to counsel's
16 representations to this court, why shouldn't this court
17 entertain right now an issue of sanctions for contempt of an
18 order of the court previously issued in King County Superior
19 Court?

20 MR. SCHNEIDER: Two reasons: One reason is that we
21 believe that the TRO was improperly granted. It was not
22 opposed. It was a procedure that you are familiar with in
23 the superior court when the commissioner issued the order.

24 That's not a reason not to comply, but there has been an
25 effort to try to produce some financial information, I'm

1 prepared to tell you that today, and prepared to tell you
2 that it preceded the setting of this hearing. It even
3 preceded the removal of the case. I'm happy to address it
4 right now. I was going to do it later, but let me just get
5 right to that.

6 THE COURT: Okay.

7 MR. SCHNEIDER: The contract into which the parties
8 entered is specific as to what is obligated and what is
9 entitled in the way of information. It is not complete
10 transparency. It is not everything that's in the TR0.
11 That's true. It is an audited financial statement and annual
12 report.

13 As the court is aware, the audited financial statement is
14 the independent auditors applying or producing an opinion on
15 the company's financial statements. For reasons I can
16 discuss at length, Pricewaterhouse won't issue the audited
17 yet -- won't issue the audited opinion. My suggestion is --
18 and I've made it before today to people I represent --
19 produce the financial statement.

20 If Pricewaterhouse has not issued its audited opinion on
21 it, it's your financial statement, give them the 2009
22 financial statement. Give them the 2008 financial statement.
23 We can't require Pricewaterhouse to say, "We've audited and
24 the audit is clean," but produce it.

25 My understanding -- and I spoke to Mr. Bergan within the

1 last two hours. I said, "I'm going into court, and I'm going
2 to be asked that question. How soon can you get that in the
3 hands of plaintiff?" And the answer is, "By the end of next
4 week." And I do not take lightly the responsibility that a
5 company has in making that representation to the court. That
6 is what I am told. I believe that it is something on which
7 we can rely on.

8 THE COURT: Now, Counsel, I want to make sure I have
9 crystal clear understanding of what your client has
10 represented to you to represent to this court.

11 Now, when you say "by the end of next week," what
12 specifically are you representing to the court that he will
13 have and what will it look like by the end of next week?

14 MR. SCHNEIDER: Number one, the 2008 financial
15 statement, which, by the terms of the contract, an audited
16 version of which was due May 1, 2009. Okay. Can't produce
17 the audit, but it's the company's financial statement, the
18 statement of financial condition. And I would have to look
19 at what Pricewaterhouse has issued as an audited financial
20 statement in the past, but it would be the financial
21 statement not accompanied with the independent auditor's
22 opinion. Okay? That's item one.

23 Item two, the same financial statement unaccompanied by
24 the independent auditor's, Pricewaterhouse's, opinion on the
25 2009 financial statement, which will be due May 1, as you

1 previously indicated.

2 Item number three -- which I haven't addressed yet, but
3 I'm happy to keep going -- the most recent month-end
4 financial statement, again, internal to the company, not
5 audited by the independent auditors. I am told that the one
6 that is most current is not February 2010 but it's January
7 2010. Fairly recent. I'm told that it is finished and it
8 can be produced to the plaintiff by the end of next week.
9 Again, it would not be accompanied by the audit, but it would
10 be the financial information.

11 And, again, I don't -- again, this is not information that
12 is required by the contract, but I believe it to be
13 appropriate, given the circumstances in which we find
14 ourselves.

15 Number four, item number four, again, this is nothing
16 that's required by the contract. It is our client's position
17 that it's not required, they're not obligated, but I'm
18 prepared to tell you, with the client's understanding,
19 they'll produce by the end of next week item number four,
20 certain portfolio information regarding the actual
21 investments which have been made with the money that was
22 invested by the plaintiffs.

23 Let me be very clear, let me try to be very careful. This
24 would not be a disclosure of each and every, for instance,
25 corporation in which an investment has been made or a lending

1 arrangement that has been made, but it would be identified by
2 amount, status, value, and sector. And I think Mr. Stone,
3 who is certainly an expert in this field, would understand
4 that to mean is it in the energy sector, is it in retail, is
5 it in some other, you know, industry sector? It would be
6 information which would be of interest to the plaintiff, I
7 believe. It goes beyond what the contract requires. As I
8 stand before you today, I'd say I think it's appropriate that
9 it be produced, even though it's not required by the
10 contracts.

11 As far as the other information, I think you have examples
12 in front of you in Exhibits 5 and 6 to the Bergan
13 declaration, these are the monthly statements from the
14 administrator, Equinox, which it is my understanding those
15 come out monthly and are received by the plaintiff in the
16 ordinary course. That's why I'm told.

17 Item -- Exhibit 6 to the Bergan declaration is more of a
18 return statistic, statistics on returns, which I don't think
19 the plaintiff gets in the ordinary course, but it was
20 provided in the Bergan declaration as an example of the type
21 of information that can be provided.

22 The last thing I'll say on this subject -- and I apologize
23 if I've gone on longer than you intended -- we believe that
24 it would be appropriate to have a form of protective order
25 entered in order to exchange that information. We have

1 prepared one. We actually prepared one yesterday in
2 anticipation of making this information available, and you
3 can quote me, regardless of what the court's ruling is today,
4 I'm prepared to tell you, even if you don't order this
5 information produced, it is the client's understanding that
6 the client is producing it next week with or without an order
7 from the court requiring them to do so.

8 That is a long explanation of the fact that steps have
9 been taken. I don't want to mislead you. I don't believe
10 that there's been a lot of energy expended over the two weeks
11 or the three weeks that the TR0 issued. I don't think that
12 there has been literal -- there hasn't been literal
13 compliance with the TR0, that is true. Are these efforts
14 that could have been undertaken earlier than they have been?
15 I think it's fair to say yes, and I think I should tell you
16 that. But I don't think that it should mitigate the merit of
17 the clients doing it now and deciding to do it now before we
18 ever understood we'd be here for this hearing today.

19 THE COURT: Let me stop you there, Counsel.

20 Oftentimes, Counsel, it is the court's option of
21 recognizing where the parties are prior to the court making a
22 formal determination is to step back and give the parties the
23 opportunity to confer to see if what's on the table is a
24 sufficient proposed remedy, that it's adequate under the
25 circumstances. And I'm certainly not terminating my

1 examination of counsel, but I don't know if it's necessarily
2 a wise course of action to stop right now and take a recess
3 to give counsel for the plaintiffs and counsel for the
4 defense a chance to confer regarding the proposal made by
5 counsel.

6 One other question before I ask you to do that, Counsel.
7 Counsel for the defense, you've indicated in many of your
8 representations point by point that the items were finished,
9 but it was a question of production not until the end of next
10 week.

11 So if the items are finished and if urgency is the primary
12 concern and the reason for the TR0 being filed in the first
13 place, we're already two and a half weeks past the initial
14 filing, what would prevent an immediate production, meaning
15 as soon as Monday, for that material to be provided to the
16 plaintiffs?

17 MR. SCHNEIDER: Again, I want to be careful, and I
18 think you can appreciate exactly why I want to be careful. I
19 think I used the word "finished" with respect to the
20 month-end January of 2010 internal financial statement.

21 THE COURT: You're correct, Counsel.

22 MR. SCHNEIDER: I hope I didn't use it with respect
23 to the other items I mentioned, because I don't know that
24 those are absolutely finished and able to be produced right
25 away.

1 THE COURT: Okay.

2 MR. SCHNEIDER: But they might be, and I'll find out.

3 THE COURT: Okay. Now let me come back to counsel --

4 MR. SCHNEIDER: Lastly, I think I need to say this in
5 response to your question:

6 The portfolio sector information, that is going to require
7 some redacting, some presentation. I know that to be
8 unfinished. I believe it is being done as we speak, but I'm
9 not positive about that. That is not a finished product, nor
10 could it be.

11 THE COURT: Counsel for the plaintiffs?

12 MR. THORESON: There's really only one other area I
13 think needs to be vetted, Your Honor, before we talk, because
14 it's important to us, and that's, we need to, and we're
15 amenable to a protective order on this point and topic, but
16 we need to know if there are any other investors. We need to
17 know percentages and we need to know investors, because it's
18 very important. And if they are going to be attentive in a
19 belated way -- and I appreciate Mr. Schneider has probably
20 pushed this process forward where it wasn't being pushed
21 before -- it's a very important piece of information that my
22 clients need now. We can maybe get it through expedited
23 discovery, but that -- that would -- I think if they can
24 produce that as well, that we'd have something to talk about.

25 MR. SCHNEIDER: I can tell you what I know, and that

1 is, I hate to sound like Donald Rumsfeld, believe me, but I
2 can tell you what I know is that I don't know the answer to
3 that. What is in the Bergan declaration sheds some light on
4 it. It's not enough, in my opinion, and I say that
5 willingly. Even though the contracts don't require it, BVI
6 doesn't require it, I believe it would be appropriate to
7 provide that information, if the court so orders it. I
8 believe it will be forthcoming, but as I stand here today, I
9 can't tell you that I have authorization to say, yes, that
10 will be produced without a court order. Does that make
11 sense, Your Honor?

12 THE COURT: That makes sense. All right. Counsel?

13 MR. THORESON: Your Honor, I think we'd be happy to
14 chat with Mr. Schneider for a minute and see if we can come
15 to some resolution. I think you're looking at something
16 that's more of an agreed-to order the parties will present
17 this afternoon?

18 THE COURT: What I want, Counsel, is I want to have
19 an oral agreement between the parties, even if it's not in a
20 written fashion right now. My preference is to have it
21 ultimately reduced to writing before the end of today so that
22 counsel can fax something back to his client or transmit
23 something back to his client so they're operating under court
24 order. But I want to make sure that as you walk out the
25 door, you and your clients have a full understanding of

1 exactly what the agreement is, and it's merely a question of
2 reducing it to writing.

3 MR. SCHNEIDER: We are on the record, I take it?

4 THE COURT: Absolutely, Counsel. When you walk in
5 that door, you're on the record.

6 MR. SCHNEIDER: Okay. I've been under that
7 impression, and I just want to be sure. In fact, we have a
8 record of what I've said so far, and I think it's entirely
9 appropriate to proceed exactly as you've indicated.

10 MR. THORESON: The one thing I would suggest, Your
11 Honor, if your client is available, would be that we try to
12 work something out and hopefully get your client -- and if --
13 if -- to agree, at least confer with his client that he'll
14 agree, or in the alternative, that we reconvene, we get
15 something on the record, but he gets the agreement this
16 weekend so we're back in front of you first thing next week.

17 THE COURT: Counsel, be back before this court at
18 9:00 a.m. on Monday, if you're ready to go. We'll take a
19 break now, but I want affirmations from the parties as to
20 exactly what you agree to. I won't set a time limit on the
21 break right now so that you can confer and make telephone
22 calls, if necessary and appropriate, and then let the
23 in-court deputy know the appropriate time for the court to
24 come back out.

25 MR. SCHNEIDER: Very well. We expect to be able to

1 reach Mr. Bergan before 2:45, but not for an hour or two
2 after, so I'd like to make that call.

3 THE COURT: Okay. We'll be in recess.

4 (A RECESS WAS TAKEN.)

5 THE COURT: Counsel, I see more smiles on people's
6 faces now than there were when I walked out before the break.
7 I assume you've had some progress in your discussions.
8 Counsel for the plaintiff or for the defense?

9 MR. THORESON: I think I'll let Mr. Schneider hang
10 himself for his client, based on getting on the record.

11 I think we've got an agreement, Your Honor, and I'll let
12 Mr. Schneider give it a try, and I will add stuff at the end.

13 MR. SCHNEIDER: The commitments I represented to the
14 court are unchanged.

15 THE COURT: Okay.

16 MR. SCHNEIDER: So we have affirmation, as I
17 suspected we would, of everything I've told you as to what
18 would be produced.

19 I have a couple of answers to questions you asked, Your
20 Honor, if you would like to hear them.

21 THE COURT: Please, I would.

22 MR. SCHNEIDER: The January 2010, the monthly, the
23 last month-end financial statement, I'm told yes, it is
24 finished. It's in Montrose, Switzerland. Mr. Bergan will
25 know Monday morning if he can get it to us Monday morning.

1 If he can, it will be early in the morning, and I'll get it
2 to counsel for the plaintiff early in the morning. So that's
3 not meant to be wavering, it's meant to be accurate. I think
4 we can do it. I can't commit to you that it will happen,
5 because he has to have that conversation with people in
6 Europe on Monday morning.

7 With respect to the participants in the fund and their
8 identities and positions, we believe that information can be
9 provided and will be provided. It's not something that will
10 be Monday, but there's no -- there's no reservation on that
11 commitment as well.

12 I'm looking at my notes, if there are any other questions
13 you had about what I said. I don't see any others.

14 THE COURT: Okay. If you're committing to the same
15 representations you made, Counsel, I won't make you restate
16 them. They're all a matter of record right now. What I
17 would like, though, you made the statement "by the end of
18 next week." I always like to know what someone's end of week
19 is, just in case somebody is on a four-day workweek. What
20 does end of the week mean, Counsel?

21 MR. SCHNEIDER: It means a week from today, probably
22 4:30 p.m. Pacific time on the 9th. Let me say this: If the
23 information is available before then, we will not wait until
24 Friday, much less 4:30.

25 THE COURT: All right. That's the court's

1 expectation, Counsel. Does that complete your
2 representations of your understanding before I go to the
3 plaintiff?

4 MR. SCHNEIDER: Yes. I think one thing that is
5 unstated that I'll tell you, is that this arrangement is not
6 meant to postpone or defer or compromise or affect any rights
7 that the plaintiff later seeks to have this court entertain.
8 This is going to happen.

9 THE COURT: Well, what I'd do, Counsel, just to give
10 you a heads-up, assuming we do have an agreement, is that
11 correct, counsel for the plaintiffs?

12 MR. THORESON: There's a couple of things I'm going
13 to raise, but I believe we have an agreement, Your Honor.

14 THE COURT: Okay. It's the court's intention,
15 assuming you have an agreement, is to continue the injunction
16 hearing so that the court maintains jurisdiction over that
17 particular issue. The only question is in terms of
18 preserving status quo, so I'd like you to address that, but
19 I'll give counsel for the plaintiff an opportunity to
20 interpose his additional comments and see where we are from
21 there.

22 MR. SCHNEIDER: Can I be heard first?

23 THE COURT: Yes.

24 MR. THORESON: Um, this Mr. Stone, who I think
25 appreciates being called an expert, I think he is, but it's

1 always nice to be called that by opposing counsel, he's
2 leaving for London next Friday, so to the extent possible,
3 if -- I know they're going to get it to us earlier, but I --
4 we really could use it because he needs to look at this on
5 Thursday. I don't know if an extra day really matters that
6 much, but that's just a request coming from -- from
7 Mr. Stone.

8 THE COURT: Any objection to modifying the order,
9 Counsel, to be due at 4:30 on Thursday?

10 MR. SCHNEIDER: Again, I just need to be careful.
11 That's not something I sought in the phone call I made, and
12 so I don't have that commitment. I can tell you that if it's
13 available, we'll get it to him Tuesday, not Friday. But I
14 don't have -- I did not ask the client in the phone call,
15 "Can we commit to something before the end of next week?"

16 THE COURT: I'll set it for next Friday, 4:30 Pacific
17 Standard Time, and if it presents any problem as we're
18 approaching Friday, or, actually, Thursday, before Mr. Stone
19 leaves, if you'd alert the court, you can contact the court's
20 in-court deputy or the court's law clerk, and if we need to
21 have some type of a hearing on the telephone to address any
22 minor concerns, we can do it that way.

23 MR. SCHNEIDER: I would envision giving a status
24 report midweek, if you wish. I don't mean to take your time,
25 but we'll communicate with the designee, and the two can get

1 on the phone and say here's where we are. If something comes
2 up, we'll report it.

3 THE COURT: All right. That sounds perfectly fine.
4 Counsel?

5 MR. THORESON: I just want to -- I know the record is
6 what the record is, but I -- I just want to kind of recite so
7 that Mr. Schneider can jump on me, if he needs to, kind of
8 what I understand is going to be provided. And then I'm
9 going -- we've made a couple of requests that Mr. Schneider
10 has agreed to ask about, and I want the court to be aware of
11 those because there's some stuff we asked as it relates to
12 injunctive relief, he's not sure, and we may have to be back
13 here anyways on those issues, if we can't reach an agreement,
14 so I'm going to raise a couple of them.

15 So that I understand, we're going to be getting unaudited
16 financial statements --

17 MR. SCHNEIDER: 2008.

18 MR. THORESON: -- for 2008, and am I right, 2009?

19 MR. SCHNEIDER: (Nods.)

20 MR. THORESON: And a month-end that's unaudited for
21 the last month; is that fair?

22 MR. SCHNEIDER: January of 2010.

23 MR. THORESON: January of 2010. And these are not
24 the same as the one-line documents that we see in Exhibit 5
25 or the -- some of the return documents that are Exhibit 6 to

1 Mr. Bergan's declaration, but they, in fact, are the fund
2 performance documents for Fund II?

3 MR. SCHNEIDER: That's my understanding, yes.

4 MR. THORESON: The second thing that we're going to
5 get is going to be a list of the other investors in Fund II,
6 and, I mean, I know that you said you're going to talk to
7 your client, and the percentage interest of the folks within
8 Fund II; is that right? I'm sorry. I'm not trying to -- I
9 understood you said that. I just want to make sure that
10 we're right.

11 MR. SCHNEIDER: To be clear, what I said was I have
12 no problem requesting that. I personally think it would be
13 appropriate. I don't know of a reason why the client would
14 say no to that, but I do not have authority this afternoon to
15 say that the client has committed to do that or has agreed to
16 do that, but it is correct that I have agreed to inquire and
17 promote the idea.

18 MR. THORESON: Okay. Well, that's -- that's why I'm
19 saying this right now so the record is clear. And we would
20 also ask -- and we'd ask that Mr. Schneider talk to his
21 client about it -- for those folks to the extent you can get
22 the client to produce it, the contact information.

23 THE COURT: The contact information for?

24 MR. THORESON: For each other investor.

25 THE COURT: Okay.

1 MR. THORESON: We did ask -- and I believe, again,
2 and I will say on the record that I think that Mr. Schneider
3 is being very fair in this proceeding. For -- he talked
4 about the type of investment that was made. I believe he
5 talked about it by, you know, market sector, it might be
6 retail, it might be something else, but we talked to him also
7 about -- because we have reporting requirements, Your Honor,
8 as a public pension fund, and we talked to him about the type
9 of sector and the investment type, and I think Mr. Schneider
10 agreed he would inquire of his client and try to get the
11 investment type, because that's something we need to report.

12 MR. SCHNEIDER: That is true, I did agree to try to
13 get agreement on that.

14 For your information, Your Honor, when we talk about
15 investment type, subject to clarification from counsel,
16 meaning is it shares of stock, is it equity, is it debt, is
17 it a collateralized loan? It would be a description of the
18 type of investment rather than the precise detail of the
19 investment itself.

20 THE COURT: And also for clarification, Counsel, I
21 believe there was representation of redaction of certain
22 information. Have we clarified what information is going to
23 be redacted, or is it going to be unredacted at this point?

24 MR. SCHNEIDER: I expect there will be redactions,
25 which would be the very specific detailed information; for

1 example, if an investment is made in a low grade or a
2 speculative security, the actual corporation's name might be
3 redacted, but the sector in which it is operating would be
4 identified and the type of investment, whether it's equity,
5 debt, collateralized loan would be provided. That is my
6 expectation, based on what I heard. I've not seen what the
7 client is preparing, but I understand it is being prepared in
8 that way.

9 THE COURT: All right. Please continue.

10 MR. THORESON: I think what -- what we have fought
11 about here, Your Honor, is we really can't debate the issue
12 until we see what we get. And what we proposed to
13 Mr. Schneider, I think it's accepted, is that they'll produce
14 stuff to us in whatever redacted form they think is
15 appropriate, and if they have a problem with it, we'll get it
16 before Your Honor and ask that the unredacted documents be
17 produced to you for an in camera review and we can deal with
18 them at that point.

19 But I think right now -- hopefully, at least the way I see
20 this thing going, they're going to give us more information
21 than less. Hopefully it's going to be the information we
22 need to understand our situation. And if we get to a point
23 where we're finding some of the information has been overly
24 redacted or is not useful, then we'll be back in front of
25 you.

1 THE COURT: You'll have the opportunity to do so,
2 Counsel.

3 MR. THORESON: A couple other things, Your Honor, is
4 we have asked and Mr. Schneider has agreed to ask when the,
5 in particular, when the Westford investment was made. We
6 kind of need to know when that was done. And his client
7 hasn't -- he hasn't asked him that question that he's agreed
8 to ask, and we believe it's important information.

9 The -- we've asked for, and Mr. Schneider, again, has
10 agreed to ask but hasn't committed to -- that his client, of
11 course, will provide it, but we're looking for the underlying
12 documents by which Epsilon II made the investment in
13 Westford, which includes subscription agreements or other
14 documents that show what Epsilon II's rights are. These
15 would be the investment in Westford, which is the company
16 that's in liquidation proceedings to the fund.

17 And Mr. Schneider has agreed to inquire -- he does not --
18 his client -- he doesn't know what his client will respond to
19 on that issue, but it is one of the issues we talked about
20 earlier.

21 THE COURT: Do you envision, Counsel, right now that
22 you can identify what specifics would fit under that category
23 as underlying documents so that he has some semblance or
24 context of conversation?

25 MR. THORESON: I -- I think I've already told him.

1 MR. SCHNEIDER: Subscription agreements, investment
2 agreements. I don't know what's there, but I believe counsel
3 has accurately stated my willingness to inquire and find out,
4 and my optimism that I will be able to provide it and my
5 enthusiasm for doing so.

6 MR. THORESON: And I think it -- it will look a lot
7 like the documents we have here, Your Honor, which are
8 confidential memorandas, subscription agreement, just the
9 documents that will be used to describe and secure that
10 investment.

11 THE COURT: I only ask, Counsel, because I think the
12 more clarity that you have in terms of what it is you're
13 looking for will minimize the confusion in counsel's
14 communication with his client.

15 MR. THORESON: Another area Mr. Schneider has agreed
16 to inquire but doesn't -- is not able to commit to is the
17 liquidator, Grant Thornton, has been appointed in the
18 Westford special fund matter. When we spoke to him this
19 morning, he's been communicating with Fund II, our fund,
20 Epsilon II, but indicated he couldn't provide us the
21 information because we're just a shareholder.

22 We don't know what our status is, but we have asked
23 Mr. Schneider to ask his client whether or not they'd be --
24 they'd allow us to get the information from the liquidator
25 that has been provided to Fund II, and Mr. Schneider has

1 agreed to inquire.

2 MR. SCHNEIDER: Correct.

3 THE COURT: Okay. Please continue.

4 MR. THORESON: Mr. Schneider has also agreed to
5 approach his client and ask for permission for our client to
6 communicate directly. I think this is kind of an expedited
7 discovery matter, so it may be a little bit outside this, but
8 I want everything on the record, to contact the auditor,
9 PricewaterhouseCoopers, and ask them directly why they're
10 not -- they have not completed the 2008 audited financial
11 statement and annual report. So he doesn't have the
12 authority to say that the client has given that approval, but
13 he's going to seek it, as I understand it; is that right?

14 MR. SCHNEIDER: That is correct.

15 THE COURT: Okay.

16 MR. THORESON: And the broker-dealer at this point is
17 a company in Ireland called Equinox. It was Goldman Sachs,
18 and before them, I believe, JP Morgan. They are going to
19 have some information. We've asked Mr. Schneider also to
20 talk to his client and ask if we can talk to the
21 broker-dealer directly. Obvious- -- that, actually, is the
22 one entity. We did not name them as a defendant, I don't
23 believe, but we did try to get them information. They're in
24 Ireland. We haven't. So we've -- we've at least asked him
25 to talk to Equinox or talk to his clients to see if we can

1 communicate directly with the broker-dealer.

2 MR. SCHNEIDER: Correct.

3 MR. THORESON: I'm sure I've left something out.

4 THE COURT: How about the protective order?

5 MR. THORESON: The protective order, we are going --
6 we haven't reviewed it, but we're going to agree with it.
7 The one thing we're going to look at modifying is a provision
8 that allows -- if any of the information is pertinent, that
9 allows us to use that information under seal saying that BVI
10 or anyplace else that we need to file an action to protect
11 our client's rights, and it sounds like we can reach
12 agreement on that.

13 MR. SCHNEIDER: Again, that's not something that I
14 raised with the client, so I can't commit to it, but it makes
15 good sense to me that whatever the protocol is for this court
16 to have documents under seal that are protected by the
17 protective order ought to accompany any filing in any other
18 court in any other land.

19 THE COURT: That's fine with the court.

20 MR. THORESON: I -- I believe that's it, Your Honor.
21 I don't know that I have anything else.

22 THE COURT: Counsel, do you have something to
23 supplement?

24 MR. SCHNEIDER: You asked for me to respond to your
25 suggestion that the hearing on the injunction would be

1 continued, and my response is quite straightforward. That
2 makes very good sense to me that the hearing be continued,
3 and whatever needs to be taken up at later date be taken up,
4 if anything.

5 MR. THORESON: And that -- that is fine with us as
6 well, Your Honor.

7 THE COURT: Is there any determination that needs to
8 be made today regarding preservation of status quo, which, I
9 think, Counsel, the main issue was getting documents, and I
10 think you specifically said that. Continuation of the
11 injunctive hearing would give you the opportunity to come
12 back to this court.

13 MR. THORESON: I believe, Your Honor, that it's well
14 established precedent in the Ninth Circuit that the TRO is
15 effective upon removal until it is vacated by the court. So
16 I believe we're still operating according to the TRO, and as
17 long as they're attempting compliance, we're fine.

18 MR. SCHNEIDER: Well, to be clear, I don't know if
19 that's correct. I wish I did. I know that it would have
20 expired after 14 days if we were still in state court.
21 Fourteen days have transpired. If it is still in effect, I
22 do not want to leave here today saying that I understand it's
23 being fully complied with, because, for instance, the vague
24 and nebulousness, as the court put it, do no harm, which I
25 think it's impossible to comply with, because it doesn't set

1 forth any standards by which the party who hopes to comply
2 can engage whether he, she, or it is complying. So my --

3 THE COURT: Why don't we do this, Counsel: Why don't
4 we adopt the order of what you've agreed to do and what
5 you've agreed to ask your client to do as to be the new
6 temporary restraining order that's in effect between today's
7 date and the date we continued to the preliminary injunction
8 hearing? That way the old order expires and we have a new
9 order that will come into existence based upon what you've
10 agreed to today.

11 MR. SCHNEIDER: My understanding is that if you
12 haven't already, you are about to order us to comply with
13 everything that we've agreed to do as represented to you.

14 THE COURT: That's correct.

15 MR. SCHNEIDER: I have an aversion to it being in the
16 form of a temporary restraining order. The fact that it is
17 an order of the court is not going to make it any less
18 enforceable or compliance any less adequate, but I don't
19 think it should be in the nature of a TRO per se.

20 THE COURT: Does the plaintiff have any objection to
21 it just being just the order of the court and eliminating the
22 categorization at this point in time?

23 MR. THORESON: I have one grave concern, and I'll
24 just state it right now, because I trust Mr. Schneider and
25 trust Perkins Coie. They can be fired Monday, and I've had

1 this problem before and I know he's trying to do the right
2 thing. Our experience with these defendants has not been
3 very good so far. So I think that there should be something
4 that has some teeth in it, and I -- again, I agree -- I -- I
5 know what Mr. Schneider is saying, and I believe --

6 THE COURT: Counsel, even if he's fired today, the
7 order is still effective. They can go through 15 different
8 counsel, and the order is still there.

9 MR. SCHNEIDER: The parties are definitely ordered to
10 perform.

11 MR. THORESON: What I'd like to do, Your Honor, is
12 maybe we can set a week from Friday -- and I believe
13 Mr. Schneider, if he's involved, will comply -- but have a
14 hearing set for noncompliance. I know you set a 4:30. I
15 just need some trigger. I need something to assure that
16 these guys are still sitting there after the client has a
17 weekend to think about this and that we not getting a notice
18 of substitution, withdrawal, and I need -- I need something
19 that they're working against to know -- I know you've got an
20 order. I don't think I have anything written today. That's
21 just the one thing that concerns me.

22 THE COURT: Do you have any objection, Counsel, to
23 having a date and time set for compliance?

24 MR. SCHNEIDER: No, I don't. I have no objection to
25 that.

1 MR. THORESON: And that -- that -- that would be fine
2 with me.

3 THE COURT: All right. Let's do that, then.

4 MR. SCHNEIDER: It is my hope the information
5 conveyed or the reports to counsel will make that
6 unnecessary, but I have no problem with it being set today.

7 THE COURT: Okay.

8 MR. SCHNEIDER: One question about the parties.
9 Mr. Stevanovich has not been served. I think the order
10 should be binding on the parties who have been served. And I
11 think that will do it, then. I understand there may be some
12 skepticism, but I don't think it should be an order on him
13 until he is served. I want to say --

14 THE COURT: Until this court has jurisdiction, we
15 wouldn't have authority to do that.

16 MR. SCHNEIDER: With your permission, may I respond?

17 There are many things about the presentation you heard
18 today to which I would respond, if the court was entertaining
19 further argument. I don't think you are. There are a couple
20 of things I need to tell you, despite that, if I may.

21 THE COURT: You may.

22 MR. SCHNEIDER: Personal service of Mr. Stevanovich,
23 it is my hope and expectation that he will execute an
24 acceptance of service as if served personally in his state of
25 residence, and that will be the end of that. If there is a

1 jurisdictional challenge, it will be brought as a motion, not
2 as some effort to evade service. That is my expectation.

3 Number two, the timing of removal might appear curious to
4 Your Honor, because it was on the verge of a hearing in
5 superior court and the TR0 had been issued, and all of a
6 sudden we're up in federal court as the TR0 is about to
7 expire.

8 I don't want to argue this. I want to tell you that we
9 tried to spell out in the papers on removal why it was done
10 on the day it was done. In essence, it was our conclusion
11 that the jurisdictional minimum of \$75,000 or more was not
12 satisfied until the first date on which the management fee at
13 issue was payable. Under the contract, the first date on
14 which that management fee could be payable was the last day
15 of the first quarter of the year, Wednesday the 31st. That
16 is why we removed it that day and not before.

17 I didn't want the court to be under the impression that
18 the timing was governed by the hearing set in superior court
19 as opposed to that. We spelled it out in the papers, but I
20 don't know if that would have got to your attention. So I
21 wanted to say that.

22 THE COURT: We did have conversations on that topic,
23 Counsel, behind closed doors.

24 MR. SCHNEIDER: Very well. I think that's all I wish
25 to say today, and if there's a need to address other

1 arguments that counsel made, I'll do it at that time, but not
2 today.

3 THE COURT: Counsel, you'll have that order to the
4 court by Monday?

5 MR. SCHNEIDER: Yes, and we've made arrangements to
6 transmit and to have what we transmit reviewed late this
7 evening New York time, so we're not going to put off till the
8 weekend trying to get something to them.

9 THE COURT: Do we have a date certain for the
10 continuation of the injunction hearing?

11 MR. THORESON: That's a good -- I mean, I'd -- I'd
12 like to -- I'm certainly willing to accommodate whatever
13 Mr. Schneider and his firm needs.

14 One issue we haven't addressed, and everybody is sending
15 me notes about it, so I need to raise it. We do have a
16 dispute about whether or not -- and it was something that was
17 enjoined in the TR0, and it's what Mr. Schneider just said
18 was the basis for creating the jurisdictional requirement to
19 remove the matter.

20 We don't agree that they're allowed to make a management
21 fee, and I think they believe they are. There's right now a
22 TR0 in place that says they're not supposed to, and I don't
23 really know what we do in the interim, Your Honor -- we
24 argued it -- between now and -- you know, I guess I'd be
25 happy if they'd just said they're not going -- if they take

1 it, it is what it is. It might be a breach of contract, in
2 our estimation.

3 But I'd like between today and between when we're back in
4 front of you on the -- on the preliminary injunction, if we
5 have to get there -- that they agree to not take a management
6 fee, because we're -- we're arguing they're not allowed to,
7 and in their response they argue they're allowed to. I
8 understand Mr. Schneider is not going to argue this, but
9 that's -- that's the one thing that's kind of in flux, I
10 think, with this nice kind of voluntary order we entered
11 into.

12 THE COURT: Well, I suspect that counsel is going to
13 offer to contact his client and ask if they'd be willing not
14 to take a management fee until a date the court gives the
15 parties.

16 MR. SCHNEIDER: I do. I will also tell you this: I
17 don't know what's been done, if the management fees have been
18 taken. Obviously, this case will allow the arguments about
19 whether injunctive relief is appropriate for monetary damages
20 and so forth.

21 I will tell you this: I think it would be fair to say --
22 and you can correct me if I'm wrong -- that if the management
23 fee has not been taken, this court would be surprised and
24 concerned if it is taken in the coming days, in the next week
25 or two while this performance is being undertaken, and I

1 intend to commit.

2 THE COURT: So you'll make the request of your
3 client?

4 MR. SCHNEIDER: Yes.

5 THE COURT: All right. Let's set a date certain.
6 The 16th at 9:00.

7 MR. THORESON: That would be fine.

8 THE COURT: Is that acceptable to the defense?

9 MR. SCHNEIDER: It's acceptable. I need to tell you
10 this so you're not surprised later.

11 I will be in London that day checking on Mr. Stootman.
12 No. Coincidentally, I need to be in London, and I believe
13 Mr. McMillan, my partner who is also on the pleadings, I
14 believe will be back from his out-of-town trip, which ends
15 this weekend, and he will be here. So I'd say yes.

16 THE COURT: When do you come back?

17 MR. SCHNEIDER: I leave on the 11th and I come back
18 on the 20th. It's not just to London. It's -- it's to the
19 East Coast and then to London. It's two separate trips.

20 MR. THORESON: I'm happy to put it over until he
21 returns.

22 THE COURT: I'd prefer to have you here, Counsel,
23 because unless your co-counsel is going to go back and read
24 the transcript to know precisely what arguments have been
25 made to focus this court's attention --

1 MR. SCHNEIDER: I'd be happy to be here. It would be
2 very awkward for me to be here before the 20th.

3 MR. THORESON: I'm available Friday the 23rd, Your
4 Honor.

5 THE COURT: The 23rd at 9:00?

6 MR. SCHNEIDER: I believe that -- I don't have my
7 calendar. I believe that's fine.

8 THE COURT: We'll set it to the 23rd of April at 9:00
9 a.m.

10 MR. SCHNEIDER: Very good.

11 MR. THORESON: Very good.

12 THE COURT: Anything further?

13 Counsel, if you'd like, we can have a brief order issued
14 today, if it is an emergency; if not, we can wait until
15 Monday. What is your preference?

16 MR. SCHNEIDER: Monday is fine with me, but I
17 wouldn't have an objection if Counsel requires something
18 today.

19 MR. THORESON: A minute order would be great, and
20 then we'll draft something more encompassing, and we'll get
21 it over to Mr. Schneider Monday morning for him to take a
22 look at, and we can vet it.

23 THE COURT: Okay. All right.

24 First of all, counsel, before we leave, I'd like to thank
25 all the parties for coming this afternoon, including the

1 plaintiff's respective clients, and Mr. Stone as well. I'd
2 also like to thank the extraordinary efforts for engaging of
3 counsel for the defense. I think oftentimes in emergency
4 circumstances as we have today, it's often more resistance
5 and more of a tug-of-war as opposed to working towards the
6 middle to try to resolve differences. And I think counsel
7 has done a very good job of doing that. I'm not trying to
8 praise counsel for the defense unnecessarily, but I think
9 under the circumstances, from what was represented by the
10 plaintiff, I think a lot has been accomplished this
11 afternoon. Thank you. We'll be in recess.

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13 (THE PROCEEDINGS CONCLUDED.)
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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 8th day of April 2010.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter